ARGUMENT

OF

HORACE HAWES,

BEFORE THE

UNITED STATES LAND COMMISSION,

ON THE

CONSTRUCTION OF THE FOURTH ARTICLE

OF THE

MEXICAN LAW OF AUGUST 18, 1824.

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On the Construction of the Fourth Article of the Mexican Law of the 18th of August, 1824, which prohibits the Colinization of Lands within ten leagues of the sea coast, and twenty leagues coterminous with any foreign nation, without the previous consent of the Supreme General Executive Power, made as part of the argument of Wm. Carey Jones, Esq., on the claim to *Las Pulgas*.

[Mr. Jones stated to the Board, that having given his views fully on this question in his argument in the case of Cruz Cervantes, he desired that Mr. Hawes might be permitted to address the Board, as a continuation of his argument in the present case.]

Mr. Hawes then proceeded as follows:—

To the very able arguments which we have lately heard relative to the construction of the fourth article of the law of 18th August, 1824, and particularly the clear exposition of the whole subject of that law, given by my distinguished associate (Wm. Carey Jones, Esq.), in his argument upon the claim of Cruz Cervantes, I shall not hope to add any new views, or give any additional weight. My absence in Mexico during the time when all the important discussions took place before your predecessors, will be an excuse for me if I should even fall behind that degree of intelligence on some points, which has been the result of them and formed the basis of opin-

ions already fixed and prevalent. Some new authorities and illustrations will be the sum of what I have to say.

In the outset, and as merely preliminary to what I have to say about the restrictions contained in the law of 18th August, 1824, the following propositions are submitted, which will be more fully elaborated and clearly established whenever they may be directly and essentially involved in the subject under consideration.

1. *There are three principal and distinct modes by which public lands in Spanish countries have from time immemorial been reduced to the condition of private property*, namely, *sale, repartimiento and colonization.*

By the term *repartimiento*, I mean to designate that gratuitous distribution of lands which is made to resident citizens for their personal use and occupancy, in conformity with certain laws, ordinances, and customs which had their origin in Spain at least as early as the Roman conquest.

By sale of lands and colonization, is meant what these expressions literally import in English, and it being understood that there "is no magic in words," a further definition is unnecessary.

2. All the Spanish laws, regulations, and ordinances, not only those which affect and determine private rights, but those relating to the government of the territories and provinces, the administration of civil and criminal justice, the constitution and jurisdiction of the tribunals and judges, civil, ecclesiastical and military, the exercise of the royal patronage and other regalia of sovereignty, the distribution and alienation of public lands, the municipal government of towns and cities, the admission, authority and effect of the decrees of Ecclesiastical Councils, Papal Bulls, Briefs and Rescripts,—in short, all the Spanish laws which were in force in the Mexican territory at the time of the establishment of its independence, not entirely repugnant to the new order of things, continued in full force and vigor, and so far as they are not expressly abrogated, are still the rules of action and government in the Republic.

If I should cite all the authorities existing in support of this proposition, your term of office would be too short for the reading of them. It is recognized at least one hundred times in every volume of laws that has been published in Mexico from the time of its independence to this day, as well as by every author who has written upon the laws of the Republic. It is directly asserted by Anastasio de la Pascua in his Febrero Mejicano (v. 1, p. 27 to 54); by the author of Sala Mejicano (v. 1, p. 154); by Alvarez (v. 1, p. 58); by the editor of the "Colleccion de Decretos y Ordenes de las Cortes de España que se reputan vigentes en la Republica de los Estados Unidos Mejicanos," (read his preface), whose authority the assistant law agent seems to undervalue, considering him as a mere bookseller, but whom the author of Febrero Mexicano (v. 1, p. 46, 7), has quoted with approbation, who is really a bookseller and book maker, and from his "old stand" in the Portal, fronting the *Plaza de Armas* has compiled and issued more useful law volumes than any man in Mexico.

In the reports made to the Executive of the Mexican Republic by the "Junta de Fomento de Californias," the continuance in force of the Spanish laws and ordinances respecting the political government of the territories and the distribution of lands, is several times recognized. That the Spanish laws regulating the political government of the territories were in full force previous to 1836, is declared in the Reports to Congress of the Minister of Foreign and Domestic Relations for the years 1825 (p. 14), 1829 (p. 21), 1831 (p. 32, 3), 1835 (p. 34, 5).

Not only the laws of the Recopilation of the Indies, and the decrees and orders communicated in the usual and

legal form, were in force in Mexico at the time that country became independent of Spain, but in cases not foreseen and provided for by these laws, those of the kingdom of Castile were made applicable. (L. 2 Tit. 1, Lib. 2 Recop. de Ind. and L. 66, Tit. 15, ib.) These laws once in force, are always in force until changed by the sovereign power. They can not be considered to have ceased in their operation in consequence of any new law made about the same identical subject of which the former law treats, only in as far as their provisions, or any one of them, may be utterly repugnant to those of the new law; because it is a fixed rule of construction in Mexican jurisprudence that "the former law must not be deemed to have been changed by the new, except so far as it is so *expressly* declared." "The reason is because the correction (or change) of the laws being odious, it is to be avoided whenever possible, always endeavoring on the contrary to make them harmonize," (2 Feb. Mej. 17;) and even a law which *expressly* abrogates the former law, is to be strictly construed in cases of doubt, because it is of the class called *odious*. (Ib. N. 10.)

The laws of Mexico then, independent of that of 18th August, 1824, and not conflicting with any of its provisions, particularly that of 1513, 1754, 1798, those of titles 5, 7 and 12, book 4, Recop. de Indias, those of 4th January and 13th September, 1813, the Reglamento of 1781, relating especially to California, and the royal ordinance approved 19th December, 1777, confer abundant authority for the "Repartimiento" of lands, town lots, and water for irrigation and other necessary uses, as well as for the concession of mines, and the expropriation of a certain extent of land contiguous and necessary to them.

But these laws are abrogated, it is said. How abrogated? They are *modified*, but only in those provisions which are utterly repugnant to subsequent ones. But any subsequent law must not be deemed to have abrogated or changed the former, any farther than this. (See authorities above cited.) Both must be made to stand as far as possible and consistent. He who asserts that the law has been changed or abrogated, must prove it, and presumption is against him, for he undertakes to establish what the law abhors—what the law calls odious.

It might with as much reason be said, that the decrees of 11th March and 12th July, 1842, which capacitate foreigners to acquire property in mines by discovery, and denouncement, abrogate the Royal ordinance of Mineria, as that the law of 18th August, 1824, which invites foreigners to colonize the vacant lands of the Republic, abrogates all the laws that had previously existed relative to the disposition of public lands; and with equal reason, that this law was in its turn abrogated by the subsequent legislative dispositions which have been made on that subject.

After the conquest by the king of Spain of the greater part of the continent of America, a large portion of the country was partitioned out among those who were considered to have performed the most meritorious services in achieving it; another portion, it is said, was assigned and dedicated to the common use of newly established towns. The use of the rest was granted by the king to all his subjects in the Indies in common, for which reason they are denominated *tierras comunes*. They are also called *Valdias*, not simply because they are vacant or unoccupied, but because nothing was paid for the enjoyment or use of them in common. They are also called *realengas*, because the dominion or property remained in the king. (Ordinanzas de Tierras y Aguas 81, 82.) By all these different terms, lands which are not yet segregated

from the public domain, are still designated in the laws of Mexico. They are also with relation to the various sources of public revenue, sometimes denominated *bienes nacionales*, *bienes realengos rentas*, &c. (Ib. p. 94; Feb. Mej. v. 1 p. 303; Memoria del Ministro de Hacienda, 1845, p. 7; law 17th Sept., 1846.)

As a knowledge of these different terms is indispensable in order to understand the various legislative and executive dispositions affecting the alienation of lands, this seeming digression will, I trust, be excused.

Without the authority of the law of 18th August, 1824, or the executive regulation of 1828, then, lands belonging to the public domain might be granted to Mexican citizens, who not having lands already, should ask for them, and possessed the legal qualifications to receive them, and this might be done, and was done, before the law or reglamento referred to was made, in conformity with the former laws and usages and the general policy, adopted and observed from the earliest times. The ordinary and legitimate powers of the Political Chief or Governor of the Californias authorized, and his indispensable duty required him to grant lands with the concurrence of the territorial deputation, or departmental junta, or assembly, as the case might be, to Mexican citizens possessing the requisite merits and qualifications, both before and after the law of 1824, without regard to littoral or coterminous distances. Here it was an object of the greatest solicitude always, to settle up the lands along the sea coast immediately, in order to realize that rich and extensive commerce with Asia, of which the great centre and emporium was expected to be estabished here. But the Spanish and Mexican Governments were jealous of *foreigners*, whose establishment upon the sea coast and frontiers has been regarded as fraught with danger. During the Spanish domination the country was as effectually closed against foreigners as the gates of Paradise which were guarded by the cherubim and flaming sword.

Now the law of 1824, without abrogating the existing laws respecting the distribution of lands to citizens, proposes a new plan for advancing the settlement of the country, namely *colonization*, in which *foreigners* are invited to participate. To colonize a country, and to distribute lands to the resident citizens as occasion may require, are two things understood by every Mexican lawyer to be quite distinct.

To colonize a place, district or country, is to people it with inhabitants drawn from other parts. It is the transplanting them, if I may use the expression, from their native soil to another which to them is foreign, though it may be under the same sovereign. It does not *necessarily* imply the possession or acquisition of property, real or personal, however necessary this may be for their subsistence. The Government of Mexico has, however, generally provided for the *immediate* necessities of those who, under the character of colonists, have in compliance with its invitation left their former homes to establish themselves in new and unsettled districts of the Republic, besides assigning them lands for cultivation and other purposes, by which, after a short period, they are enabled to maintain themselves and families, and reimburse to Government its advances. This assistance, however, is not rendered to *foreign* colonists,—I mean aliens. They are expected to come at their own cost—upon the principle that the Republic does not take the children's bread and give it to strangers.

Will it be said, that when a citizen receives from Government an allotment of rural land, or a solar, or town lot, in the very spot where he was born and reared, that he thus becomes a

colonist, and that the granting and receiving the land thus in conformity with laws and usages long established, is an act of colonization? Most assuredly not, by any one who understands well the laws of Mexico. The general laws on the *subject* of colonization may contain provisions which authorize concessions of this kind, as well as numerous other laws on subjects quite distinct, but the *act* has nothing to do with colonization. The law of 1824 was enacted principally to invite foreigners to come and settle, and cultivate and improve the waste lands of the Republic; and secondarily to induce and aid the citizens in the towns and thickly settled districts of the older parts of the country, to go and settle upon the new lands, and invest the Government with the power to furnish them with the assistance which would be requisite in their first voyage and establishment.

In this system it is natural and reasonable that some restrictions should be introduced, in order not only to preserve to citizens the preference which they might rightly claim in the distribution of lands, but to guard against any dangers that might be apprehended in the establishment of an alien population in the country; and we therefore find it provided in the 4th article of the law under consideration, that the territories within ten leagues of the sea coast, or twenty leagues of the borders of the Republic, coterminous with any foreign nation, cannot be colonized without the *previous* consent of the supreme general executive power; and it is upon the true construction of this single article, and of the reglamento of 1828, that I have been requested to make some observations.

This law of 1824, it will be observed, is applicable to the whole Republic, and the reglamento of 1828 is made with reference not merely to the Californians, but to *all the territories*, and consequently some of the provisions *seem* at first view not to be exactly applicable to the peculiar situation of *this* country, especially when we compare the first article of the reglamento with the fourth article of the general colonization law. Now, we must make these harmonize, and when we have done it, we shall have got at the meaning of both. We must do this, not merely by reason but by *authorities*. The general course of Spanish and Mexican legislation on this subject has been presented to the former board much in detail [Jones's Argument in case of Cruz Cervantes], in order to show how preposterous would be that construction which holds that the government intended to facilitate the settlement of the interior of the country by Mexican citizens, and retard and embarrass their establishment along the borders of the Republic.—To this class of authorities, however powerful and conclusive, I shall not feel at liberty to call your attention at this time. I propose, however, to refer to authorities and opinions of another character, namely, the views of Mexican Statesmen and jurists relative to the motives and considerations which led to the introduction of the restrictions in the laws and rules of colonization, and their *construction* of these restrictions. Authorities of this class are not wanting, for although *legislative* action has been exceedingly limited, there is scarcely any one subject which the statesmen of Mexico have regarded as of higher importance, and which have been more frequently urged upon the attention of Congress and the Government, than that of colonization, especially in the *Californias*.

Immediately after the passage of the general colonization law of 1824, the government instituted a commission, called the *Junta de Fomento de Californias* (order of 18 December, 1824,) who were to propose the instructions to be communicated to the Political Chief who should be appointed for the

government of both Californias, as well as the measures which they might deem most proper and effectual to secure the advancement of agriculture, civilization and commerce in these countries. This commission was composed of twenty-one individuals of the highest character, several of them lawyers, and one member of it had been Governor of this country. They reported upon the subject of instructions to the political chief, on the 3d of January, 1825. On the 6th April following, they reported a plan for the regulation of the Missions. On the 21st of April of the same year, their plan was presented on the subject of *foreign* colonization, and on the 30th of May, a plan for colonization by native citizens. On the 31st of August, 1827, they presented the initiative of a law for the regulation of the Government of these Territories, accompanied by the observations of the committee who had had that particular subject under consideration.

The Junta presented also a commercial project, which looked to the establishment of an extensive and advantageous trade with Asia.

In these documents will be found the views of the Junta on many points of the highest interest to this country, and especially upon *the very point which is here in dispute*, and they are just the reverse of those sometimes maintained here, applying the restrictions of Art. IV, in the general law of colonization, to individual grants made to Mexican citizens in the places of their residence, and which, upon the additional supposition which has been maintained, that this general colonization law contains the only authority for the disposition of public lands, gives no local authority any right to grant even a town lot to a resident citizen in any place within ten leagues of the sea coast, or twenty leagues of the boundaries of any foreign nation without the previous consent of the Supreme Government; because vacant town lots in California, like all other vacant lands, were the property of the nation, and were granted in the name of the nation by certain public functionaries exercising delegated authority from the Territorial or Departmental Government.

Such a construction of the restrictive article in question would be new, I believe, and consequently edifying to any Mexican lawyer. Certain it is, that it did not occur to the *Junta de Fomento*, who had meditated three years on the subject of colonization. But then, as their reports were made twenty-seven years ago, some allowance is to be made if their knowledge of the jurisprudence of their country falls somewhat short of the more recent discoveries of our law agents.

"It ought," says the Junta, "to be one of the first and most important objects in the system for the colonization and settlement of the Californias, that it be done with families who are industrious, of good habits, and patriotic sentiments, for in this manner the love of labor, the love virtue, and of country, will be transmitted from generation to generation."

Again: the chapter of the instructions which treat of the care and vigilance which the Chief of the Californias must exercise to prevent the introduction of foreigners, is of the greatest importance. The last Governor of Upper California, who is vocal of this Junta, informs us that he had communicated to the Viceroy the reclamations which he had made against the establishment of the Russians in the Port of Bodega, and these documents will be found in the archives of the Secretaryship of the Viceroy, and among the papers which have been taken from that office. With respect to the rest, some explanation is due in regard to those chapters which instruct the Political Chief to inform himself if the Anglo-Americans have descended below the River Columbia, and whether they religiously observe the treaty of

limits of 22d February, 1819, and that he make known to the inhabitants of California and the Colonists, that the division line must not pass the forty-second degree. The whole space from the Port of San Francisco to latitude 42, and thence to the Columbia River, is inhabited by gentile tribes not reduced. It is consequently accessible to all who may approach the coast in order to establish communication with the tribes who inhabit it, and found settlements by their aid. Reclamations without an adequate force to support them are fruitless, and contemptable even between friendly nations.—Thus it is, that vigilance and care must be aided by force, and this should be so located either on the ocean or in some point on the coast which may cover and defend our borders. The Junta will not longer ponder upon the importance of this chapter, for the propensity which foreigners have to occupy the coast of California is well known, and especially the Russians, who, having extended their domination to the confines of Northern Asia on the South Sea, might advance their steps within our borders."

Again: "The chapter of the Instruccion respecting the 'repartimiento' of lands, has furnished to the junta matter for reflection, which ought not to be passed over in silence. Title 14 of the Spanish *Reglamento* referred to, (that of 1781,) unfolds clearly the design to foment population, not only by a proportioned *repartimiento* of lands, but by the conditions annexed to such *repartimiento*, and other aids which that reglamento extends, to make it productive of utility. All that has been done in consequence, must appear in the record of population, for which article 17 provides. Our law of colonization has for its DIRECT OBJECT (*se dirige en sí misma*) the invitation of foreigners, although it very justly declares the *preference* which Mexican citizens ought to enjoy. It has for its object those lands of the nation, which not being private property nor pertaining to any corporation or pueblo, may be colonized. Moreover, it declares that those territories embraced within twenty leagues coterminous with any foreign nation, or ten leagues of the sea coast, cannot be colonized without the previous approbation of the Supreme General Executive. It provided, also, with great propriety, that the Congresses of the several States shall form as soon as possible the regulations for colonization within their respective limits, conforming themselves in all respects to the *Acta Constitutiva*, the General Constitution, and the rules established in the law itself. Even with this provision it enjoined upon the Government that, without prejudice to the object of it, it should take the measures of precaution which it might deem proper for the security of the confederation, with respect to foreigners who might come to colonize. Although the same law has ordained, that in conformity with the *principles* established in it, the Government shall proceed to colonize the territories of the Republic, it would appear that, in order to put it into execution in either of the territories, there ought to precede, and indeed it is *absolutely necessary* that there should precede, some *reglamento* formed with a knowledge of the *peculiar circumstances* of each territory, and which shall determine the conditions with which lands are to be distributed, in order that by this means the end desired, population and cultivation, may result, and in order that the introduction of the colonists be not prejudicial to the native inhabitants. In the Californias there are very peculiar circumstances which render the reglamento the more necessary; first, because of the existence of one anterior, (that of 1781;) the effects of which will be *perpetuated*, unless some new measure (*providencia*) change and conform them to the new distribution (*repartimiento.*) Next, because in

the one and the other California, the land occupied by the Mexican Republic is of unequal breadth, circumscribed, in Upper California, to that of from *nine* to ten leagues, which embraces that portion of the country that is considered fertile, beautiful, and picturesque, except at one of the last Missions, where it may extend to fifteen leagues; under which supposition, there is (in that country) no room (*cabida*) for *foreign colonization*;—because, also, in those interior points of Lower California, in which there may be space for it, it is necessary to guard against the spirit of invasion upon the lands occupied by the gentile tribes or nations, since the disquietude occasioned by dislodging them will bring no advantage either to the aborigines themselves, or the Republic, which ought to aim only at a friendly and social intercourse with them."

Three very important propositions are expressed, not by inference, but directly, in these observations of the junta, who, for three years and upwards, devoted themselves to the important subjects given them in charge by the Mexican Government, whose fullest confidence they enjoyed,—and these propositions are the following:

1. That the direct object of the law of 1824 was *foreign colonization*, while it preserved the rights and *preferencee* which the citizens were entitled to by the existing laws in every part of the Republic.

2. That the restriction contained in the 4th article of that law relates to foreign colonization.

3. That notwithstanding the aforesaid law of 1824, the Spanish laws and regulations on the subject of *repartimiento* of lands would continue in force, unless the executive should supercede them by new ones.

And by clear inference, that without such executive regulation *foreign colonization* could not take place at all in any part of California except one, the land being all embraced within the restriction of the 4th section of the law of 1824, and the executive not having yet acted under it; that when such regulation should be made, *foreign* colonization might then take place in the country, under such conditions and restrictions as might be prescribed with a view to the peculiar circumstances of the country.

We have, however, to present for your consideration a further exponent of the views of the junta on this subject. The report on instructions to the Political Chief, from which I have just quoted, was made on the 3d of January, 1825. On the 21st of April following, in pursuance of an express order of Government of 5th April, 1825, they presented their plan and reglamento, for foreign colonization, entitled "*reglamento*, to which the colonization of the territories of both the Californias must be subjected, in fulfilment of the law of 18th August, 1824, formed by the *junta de fomento* of the same, in pursuance of the superior order of 5th April, 1825."

Here it is, with the plat of lands for a settlement distributed in accordance with the plan proposed. But let us see what construction the Junta put upon the fourth article of the law referred to in the title, regarding the regulations as an exponent of their views.

"*Article III.* In order to admit *colonization by foreigners* in the part occupied by the Republic, the previous approbation of the Supreme General Executive Power will be necessary, it not being considered, the disposition of the preceding article being regarded, that there is *any* disposable land which can be distributed to foreigners in the distances littoral and coterminous, which the law of colonization (above) cited designates, which must be rigorously observed in both Californias, as well with respect to their exterior as interior coasts, and the points coterminous with the indigenous gentile tribes or nations.

"Article IV. The Supreme General

Executive Power will give its approbation for the distribution to foreigners of lands recognized as absolutely *valdios* in the part occupied by the Republic, only when the same foreigners are capitalists, practical mechanics or husbandmen."

Here, again, we see that the restriction under consideration refers only to foreigners, and we find it also clearly intimated, that if there were lands subject to colonization not included in the littoral and coterminous distances, foreigners might, consistently with the law, settle upon them without the previous approbation of the Supreme Government.

But we have something further still to enlighten us. On the 30th of May, 1825, the same Junta presented their "*Reglamento* for the Colonization of the Territories of California with families from the Federal States of Mexico." Here it is, with the explanatory observations of the Commission, and their estimate of the expenses of the voyage of a hundred families, from their supposed place of residence in Mexico to the Port of Monterey.

Now, the Rubicon is passed, and we hear no more of coterminous and littoral distances, nor of the necessity for the previous consent of the Federal Executive, but only of the *subsequent* approbation to be given by that authority to contracts entered into with Empresarios, *without regard to the locality* selected for the settlement which they may propose to establish; because the Commission are here treating of persons for whose patriotism and fidelity nature herself stands sponsor, and *the law* exacts no other guaranty. It is treating of Mexican citizens whose settlement on the lands of Upper California the Government ought, in the opinion of the Commission, to "aid and facilitate effectively. as the measure most proper and adequate to enable the Republic to preserve this most important point, and realize the imponderable advantages to be derived from it."

The regulation of 21st November, 1828, was promulgated a little more than a year after this Commission had concluded their labors, and their final report was received by the very minister, if I mistake not, who formed those regulations, and was published and distributed among the members of both Houses of Congress, as will be seen by reference to his report, read on the 8th and 9th of January, 1828, (p. 22.)

No one can doubt, after an examination of the reports from the same Department made in the years 1825-6-7-8-9-31, in all of which mention is made of this Commission, and the important assistance which they had furnished or were expected to furnish to Congress and the Executive Government, that both the one and the other were guided almost entirely by their views and propositions. In the report delivered on the 8th of January, 1827, (pp. 36-7,) it is stated that the Government had communicated its instructions to to the Political Chief of the Californias, and as this was after it had received the report of the Junta de Fomento on that subject, it is to be presumed that their views had been adopted, for the minister remarks in the same report, that their labors had been of the most valuable service, and that they were then actually engaged in forming a plan of General Government for those Territories, and that it was expected that the propositions matured by them would aid the illustrious Members of the Legislative body to determine the measures most conducive to the preservation of that peninsula, so important to the Mexican Territory, and to the felicity of its peaceful inhabitants.

The minister at the head of the same Department, in a report read in Congress on the 9th and 14th of January, 1826, (p. 31,) after observing with respect to the plan of government to be adopted for the Californias, that on account of the peculiar circumstances of the country; it ought to differ somewhat from that framed for the other

Territories, promises to amplify his views on the subject when the Government should take into consideration the proceedings of the Junta de Fomento, which would in the shortest possible time be laid before Congress.

In comparing the reglamento of 21st November, 1828, with the two proposed by the Junta de Fomento, it will be perceived that they do not conflict in any particular. That of 1828 is necessarily more general in its provisions, inasmuch as it was applicable not only to the Californias where foreign colonization could not, owing to the situation of its habitable lands, take place without the previous approbation of the Supreme Government, bnt also to other territories which were colonizable by foreigners, without that prerequisite within the terms of the law of 1824.

It is not to our present purpose to inquire whether the Supreme Government had the faculty by *general* rules or instructions to authorize the Political Chiefs or Governors in the territories to grant lands to foreigners for colonization within the littoral and coterminous distances declared in the 4th article of that law, without its *special* approval of each contract. It is sufficient for the present case to know, as I think we do, from the highest authority, that the restriction referred to related exclusively to foreigners, and had no application whatever to the *repartimiento* or distribution of lands to Mexican citizens, and especially to resident citizens of the towns to which the lands granted are contiguous, who have by law the preference over all colonists, either Mexican or foreign.

The first article of the reglamento of 1828, authorizes the Political Chief to grant public lands to *empresarios*, families, or individuals, Mexican or foreign, who might solicit them with a view to cultivate or inhabit them; but this was to be done (Art. 4) in conformity with the laws applicable to the matter, and *specially* the law of 18th August, 1824. It is expressly declared (Art. 7) that concessions made to *empresarios* shall not be considered definitively valid until they shall have received the approbation of the supreme Government, to whom they were to be submitted, adding to the *espediente* such information on the part of the territorial deputation as they might deem proper. This is a restriction which, as it is applicable to all parts of the territories, irrespective of littoral and coterminous distances, goes beyond that contained in the 4th article of the law itself, but yet was competent for the Government to impose in execution of the general powers conferred by the 16th article. Now, before this colonization law was made, (that of 4th January, 1823, having been suspended by the order of 11th April following,) foreigners could not acquire landed property in any manner in the territories of the Republic, and from the date of that law down to the act of the Provisional Government of 11th March, 1842, they could only acquire such property under the character of *colonists*, and in strict conformity with the provisions of the *colonization laws*. By the first constitutional law, (of 1836,) Art. 13, it is provided, "that a foreigner cannot acquire real property in the Republic unless he be naturalized, marry a Mexican woman, and conform himself to whatsoever else the law may prescribe relative to acquisitions of this character. Neither can he transfer his moveable property to another country, except in the cases, and paying the contributions which the law may designate. *The acqusitions of colonists will be subject to the special rules of colonization.*" The law of 12th March, 1828, (Art. 6,) declares that foreigners not naturalized cannot acquire rural landed property, except (Art. 7) lands pertaining to silver mines, which may be necessary to fulfil the provisions of the law of 7th Oct., 1823, enabling them to acquire shares in mines. But

it recognizes (Art. 8) the offer made to foreigners in the colonization law of 18th August, 1824, and extends it (Art. 9) under certain conditions, so as to enable them to purchase and colonize lands that are private property, which the law of 1824 does not authorize. The law of 11th March, 1842, enables foreigners resident in the Republic to acquire and possess real property, urban and rural, by any and every mode known to the laws. But its dispositions do not comprehend (Art. 9) the departments coterminous with other nations, respecting which, it is provided, (*ib.*) *special laws of colonization* will be made, so that foreigners can never acquire property in them, without express license from the Supreme Government of the Republic. It also declares (Art. 10) that in those departments which are not frontier, but have sea coasts, foreigners can acquire *rural* property only at a distance of *five leagues from the coast.* In none of the departments, however, (Art. 12,) can foreigners acquire *public lands* (realengos ó valdíos) without contracting for them with the Government which possesses this right in representation of the dominion of the Mexican nation.

There was, at the date of this reglamento of 1828, no way therefore in which foreigners could acquire rural property in the Territories, either from the Government or any individual or corporation, unless they came to *colonize* in strict compliance with the offers made them in the special laws on the subject of colonization, and as those territories within the littoral and coterminous distances specified in the 4th article of the law of 18th August, 1824, could not be *colonized* without the previous approbation of the Supreme Government, it follows that foreigners could not obtain *grants of land in any manner* within those distances, without the consent of the Federal Executive, but they might receive grants or acquire lands in other parts of the Republic, either from the Government (or from individuals, since the law of 12th March, 1828,) without that previous consent, provided they came *to colonize.* The rules of colonization which the States were authorized to adopt, were to be conformable with these principles, and other limitations contained in the law of 1824, (article 3;) and the Federal Government, observing the same principles and limitations, was to proceed to colonize the territories, (Article 16.) The regulation provides (Article 3) that the Gefe Politico, upon every application for lands, shall take the necessary information to determine whether the petition comprehends the qualities required by the law of 18th August, 1824, as well in regard to the land asked for as the applicant, and that in view of the whole, (Art. 4,) he shall accede or not to the application, conforming his action to all the laws applicable to the case, and *especially* that of 18 August 1824. When, therefore, the first article of this regulation authorizes the *Gefe Politico* to grant vacant lands to Empresarios families or individaals, Mexican or foreign, it is to be understood in the cases, and with the limitations and conditions prescribed by law. It is to be observed that not one of the restrictions of the law of 1824 is repeated in the reglamento—not even that most just provision in the 9th Article which requires that Mexican citizens shall have the preference in the distribution of lands, nor that of the 12th Article, which limits the quantity of land which a single individual may acquire, nor that of the 4th Article, relating to the littoral and coterminous distances. This would have been useless, because the Executive confirmation could add nothing to the force and authority of the law, and the Gefe Politico was to take it with the regulations as his guide.

The Reglamento prescribes *other* rules not contained in the law, but necessary and proper for carrying it

into effect, and considering that it was the result, as we have before seen, of the combined wisdom of the Administration, aided by the deliberate opinions and advice of many of the best informed men in the Republic, its conformity with the law of 1824, can not be doubted.

The Executive could not exempt either the States or Territories from any of the restrictions contained in the law, nor prescribe any new ones in respect to the States, but it was competent for the Government to impose such limitations and conditions, not in conflict with the laws, which it might deem suitable and proper in execution of the 16th Article of the law of 1824, because as the legislature had given only the *bases* for colonization in the Territories, and provided that the Executive should extend them in detail, the latter had to *complete the law*, and the Executive regulations might therefore be as general and permanent as the law itself, (*Lares:* Derecho Administrativo, pp. 17-18.)